IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1246 of 2006
WITH
CRIMINAL APPEALS NO.1637 OF 2006, 673 OF 2007
AND 1209 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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RAMPAL PANNALAL & 2 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MRS SHILPA R SHAH for Appellant
MS. ML SHAH, APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 29/06/2007

CAV JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. The appellants have preferred the above-referred appeals against the judgement and order dated 10th April 2006, passed by the learned Additional Sessions Judge, Court No.14, Ahmedabad City, in Sessions Case No.19 of 2005. Since all the appeals arise out of a common judgement and order, the same were heard together and are disposed of by this common judgement.

2. The appellants in Criminal Appeal No.1246 of 2006 are the original accused No.1, 3 and 6. The appellants in Criminal Appeal NO.1637 of 2006, 673 of 2007 and 1209 of 2006 are the original accused No.2, 5 and 4 respectively. (For the sake of convenience the appellants are hereinafter collectively referred to as the accused.)

3. The prosecution case is that the complainant Sulochanaben had lodged a complaint that she and her husband Bantu Motiram (hereinafter referred to as the deceased) were living in Ramji Mandir’s Chali at Jamalpur in Ahmedabad. Deceased Bantu Motiram was carrying on the business of selling puri-pakori in a handcart near Bhadrakali temple. On 22.8.2004, the deceased, as usual, had gone for his business with her brother-in-law Radhe. At about 5 O’clock in the evening Rampal Bhaiya and his

friends, accused Ghanshyam, Bhole, Pushpin and Jitendra, in all five persons who were residing at Ramji Mandir’s Chali and were known to the complainant, entered her house, wherein Rampal had a stick in his hand. Out of these five, Rampal indiscriminately hurled vulgar abuses at her and asked her what she was doing at home. The complainant told him not to use abusive language, whereupon he asked her whether she was going to call him inside or should he come on his own and started teasing her. All of a sudden, they all came inside the house and Rampal tapped her on her cheek. She, therefore, threatened him and told them to get out else she would start shouting. Upon her saying so, Rampal got incited and hit her on the forehead and her right thigh with a stick, whereupon she started shouting and all the accused went away. Thereafter, at about 9 o’clock at night, Radhe came home, whereas the deceased Bantu had come home with his cart at about 10:15 p.m. The complainant thereafter related the incident to the deceased, whereupon at about 11:15 the deceased set out to reprimand accused Rampal and his friends and the complainant also followed him and she came out of the house. Her husband had gone in front of the house of accused Jitendra and at that time accused Rampal wielding a sword, accused Pushpin with a hockey, Ghanshyam, Bholo and Kanda with sticks and Jitendra with a bare knife, came rushing out of Jitendra's house towards her husband. Whereupon her husband started asking accused Rampal as to

why they all had gone to his house in the evening when his wife was alone at home and teased and ridiculed her. So, the accused suddenly got incited and told her husband that if he behaved in a highhanded manner they would also finish him off. Saying so they argued with him and Rampal inflicted sword blows on the neck and head of the deceased and Jitendra delivered knife blows on the right hand and near the right eye, near the shoulder one after the other, Pushpin inflicted hockey blows on the back of his head and accused Ghanshyam, Bhola and Kanda beat him all over the body with sticks. At that time, her husband started crying for help and fell down whereupon she and her brother in-law Radhe came running to save him. Hence, Pushpin gave one blow to Radhe on his right thumb and another on his right hand. At that time people from the vicinity came running there, whereupon the accused fled from the scene along with their weapons. As her husband had sustained several injuries on his body, to provide him immediate treatment, she and Radhe took him to Vadilal Sarabhai Hospital in a rickshaw where he was admitted to the emergency ward and died during the course of treatment.

4. Under instructions of Dr. Manishbhai, the Chief Medical Officer, Sheth V.S. Hospital, ASI Kaluji Laxmanji had given vardhy to the P.S.O. Danilimda Police Station at 1:10 hours on 23.8.2004. The P.S.O. communicated the said

vardhy to P.S.I. Shri C.S. Baranda, who immediately went to the V.S. Hospital along with his staff for investigation. P.S.I. Shri Baranda recorded the complaint given by Sulochanaben and forwarded the same to Danilimda Police Station. Upon receipt of the complaint the same was registered as Danilimda Police Station I CR No.165/04 for the offences punishable under sections 143, 147, 148, 149, 354, 452, 302 and 323 of the Indian Penal Code and section 135(1) of the Bombay Police Act and further investigation was entrusted to P.S.I. Shri C.S. Baranda.

5. Thereafter the investigating officer drew inquest panchnama (Exh.41) of the dead body of the deceased in presence of panchas and sent the body of the deceased for post mortem to the Medical Officer, Sheth V.S. General Hospital, along with inquest panchnama and yadi. The investigating officer prepared panchnama of the scene of offence (Exh.30) in the presence of panchas. He also collected samples of blood stained earth and control earth and packed them in a plastic bag and after attaching slips duly signed by the panchas, sealed them and in their presence. The investigating officer thereafter recorded the statements of witnesses. He also took possession of the clothes, which had been worn, by Radhe Shribhagwan Sharma and complainant Sulochanaben while bringing the deceased to the hospital, in the presence of

panchas vide panchnama Exh-16. Thereafter Police Head Constable Vinodbhai Virambhai produced sealed muddamal parcels containing articles recovered by the Medical Officer after performing the postmortem, at the Police Station and possession of the same was taken in the presence of panchas by drawing panchnama Exh.17.

6. Thereafter search was made for the accused and during the course of investigation the accused were found and were arrested and a panchnama of their physical condition (Exh-18) came to be drawn in the presence of panchas and the blood stained clothes of the accused were also seized and sealed in separate bags in their presence. Thereafter various discovery panchnamas came to be drawn under section 27 of the Evidence Act in respect of incriminating articles recovered from the accused in the presence of panchas and the articles so discovered were sealed in their presence and were sent to the Forensic Science Laboratory for analysis. After receiving the letter issued by the FSL regarding receipt of muddamal, the FSL Report, Serological opinion and the Post-Mortem Report the investigating officer also kept them with the investigation papers. Upon completion of investigation, charge sheet was submitted in the Court of the learned Metropolitan Magistrate Court No.4 and the same was numbered as Criminal Case No.2445/04. The case being exclusively triable by the Court of Sessions, by an order dated 25.11.2004, the

learned Metropolitan Magistrate committed the same to the City Sessions Court, Bhadra, Ahmedabad where it was registered as Sessions Case No.19 of 2005 and was transferred to the Court of the learned Additional Sessions Judge, Court No.14, Ahmedabad City, for disposing of the same on merits.

7. The learned Judge framed Charge at Exhibit-4 against all the accused for offences punishable under Sections 302 read with Section 34 and Section 306 of the Indian Penal Code, and Section 135(1) of the Bombay Police Act; and against all the accused, except Kandaswami (original accused No.6), for the offences punishable under Sections 352, 354 and 323 of the Indian Penal Code. The charge was read over and explained to the accused. The accused pleaded not guilty to the charge and prayed for trial.

8. In order to prove the charge against the accused, the prosecution examined the following fifteen witnesses:

1. PW-1 Dr. Rohit C. Zariwala, Medical Officer, Exh.12
2. PW-2 Sulochanaben Bantubhai Motiram Nai, complainant, Exh.14
3. PW-3 Radhe Shribhagwan Sharma, eye witness, Exh.28

4. PW-4 Bharat Mithulal Choudhary, panch, Exh.29
5. PW-5 Sanjesh Ramnaresh Pal, panch, Exh.31
6. PW-6 Mehmood Alauddin Qureshi, panch, Exh.36
7. PW-7 Dineshbhai Baldevbhai Rawat, panch, Exh.39
8. PW-8 Firozkhan Sharifkhan Pathan, panch, Exh.42
9. PW-9 Gautambhai Hirabhai Rawat, panch, Exh.43
10. PW-10 Usmanbhai Sulemanbhai Sheikh, panch, Exh.47
11. PW-11 Gulammohmed Abdul Rahim Chhipa Mandosarwala, panch, Exh.48
12. PW-12 Mohmed Rafiq Usmanbhai Chhavniwala, panch, Exh.51
13. PW-13 Shabbir Yasminbhai Pathan, panch, Exh.54
14. PW-14 Dineshkumar Rupaji Nada, P.S.O. Danilimda Police Station, Exh.55
15. PW-15 Chandubhai S. Baranda, Investigating Officer, Exh.64

The prosecution also interalia, produced and proved the following documentary evidence in support of its case:

(i) Post-mortem Report Exh.13.
(ii) FIR Exh.15
(iii) Panchnama of clothes of complainant and Radhe Exh.16
(iv) Panchnama of clothes etc. of the deceased Exh.17
(v) Panchnama of physical condition of the accused as well as clothes of the accused, Exh.18
(vi) FSL Opinion regarding scene of offence Exh.19
(vii) Cause of death certificate Exh.20
(viii) Letter acknowledging Receipt of

muddamal by FSL Exh.21

(ix) Notification under S.37(1) of the Bombay Police Act,1951. Exh.22

(x) FSL covering letter Exh.23

(xi) FSL Report Exh.24

(xii) Serological Report Exh.25

(xiii) Physical Analysis Report Exh.26

(xiv) FSL Muddamal forwarding note. Exh.27

(xv) Scene of offence panchnama Exh.30

(xvi) Discovery panchnama at the instance of accused Jitendra, Exh.37

(xvii) Discovery panchnama at the instance of accused Rampal, Exh.40

(xviii) Inquest Panchnama Exh.41

(xix) Discovery Panchnama at the instance of accused Ghanshyam, Exh.44

(xx) Discovery panchnama at the instance of accused Pushpendra, Exh.49

(xxi) Discovery panchnama at the instance of accused Kandaswami, Exh.52

(xxii) Report regarding registration of offence Exh.56

(xxiii) V.S. Hospital Vardhy Exh.57

(xxiv) Vardhy received from V.S. Hospital Exh.58

Out of the aforesaid documentary evidence, the documents at Exh.16 to 27 and 41 have been admitted by the defence and have been exhibited accordingly.

9. On submission of closing purshis by the learned APP, the learned Addl. Sessions Judge recorded

further statement of the accused under section 313 of the Code qua incriminating evidence. The defence of the accused was in the nature of denial. The accused neither examined any witness nor stepped into the witness box.

10. The learned Additional Sessions Judge, at the end of trial, after hearing the learned Advocates appearing on behalf of the respective parties and appreciating the evidence on record, was of the view that the prosecution had successfully established the charge levelled against the accused, hence by the impugned judgement and order dated 10th April 2006, convicted each of the accused for the offences punishable under section 302 read with section 34 of the Indian Penal Code and sentenced them to suffer imprisonment for life with fine of Rs.1000/- and in default to undergo simple imprisonment for three months. All the accused (except accused Kandaswami) were also convicted for the offences punishable under section 352, 354 and 323 of the Indian Penal Code, however, no separate sentences were awarded for the said offences.

11. Upon the matter coming up for admission hearing, the record and proceedings were called for from the concerned Court, and are before us.

12. We have heard learned Advocate Ms. Shilpa Shah

for the appellants in Criminal Appeals No.1246/2006, 1637/2006 and 673/2007 and learned Advocate, Shri P.K. Soni for the appellant in Criminal Appeal No.1209 of 2006 and learned Additional Public Prosecutor Ms.M.L.Shah for the respondent State. Both the learned Advocates for the appellants have copies of the relevant record necessary for deciding these appeals.

13. Learned Advocate Ms. Shilpa Shah after taking us through the evidence on record submitted that the prosecution case hinges solely on the evidence of two alleged eyewitnesses who are related to the deceased, hence, there was no evidence of any independent witness connecting the accused with the crime in question. It was submitted that both the witnesses being interested witnesses their evidence is not reliable. It was contended that the panchas have not supported the case of the prosecution, and hence, there is no independent evidence qua discovery or recovery. The learned Advocate submitted that the motive regarding the appellants having gone to the house of the deceased and teased Sulochanaben stands disproved except for accused No.1. It was urged that insofar as accused No.2 to 6 are concerned they had no motive to commit the offence. She has further submitted that as regards the alleged earlier incident of teasing the complainant except for the say of the complainant, no independent evidence was coming

forth regarding the said incident. It was also submitted that the incident had taken place late at night and the prosecution has failed to lead any evidence to show as to whether at the relevant time there were any street lights or not. It was submitted that upon an overall view of the matter the conviction of the accused was not well founded. She, therefore, urged that the appeal be admitted. Learned Advocate Shri P.K Soni has adopted the arguments canvassed by Ms. Shah. Except for the contentions recorded hereinabove, no other contentions have been raised.

14. We have gone through the oral as well as documentary evidence shown to us by the learned Counsel for the appellants as well as the impugned judgement.

15. Insofar as the death of the deceased being a homicidal one is concerned, the learned Advocates for the appellants have not challenged the same; hence, it is not necessary to enter into any detailed discussion on this aspect. To prove that the death of the deceased was a homicidal one, the prosecution has mainly relied upon the testimony of the Medical Officer, P.W.1 Dr. Zariwala, the Postmortem report and the inquest panchnama. The post mortem report indicated 45 external injuries and internal injuries corresponding to several external injuries on vital parts of the body. As per the

P.M. Report, the death of the deceased has been caused due to the injuries sustained by him. In the circumstances, there is no doubt that the death of the deceased is homicidal.

16. As the case of the prosecution is based mainly on the evidence of two eyewitnesses namely, P.W.2, Sulochanaben Bantubhai Motiram Nayi, wife of the deceased who is also the complainant, and P.W.3, Radhe Shribhagwan Sharma, it would be necessary to refer to the same is detail.

17. Sulochanaben in her deposition at Exh.14 has stated that her husband used to leave for his business at about 3:00 p.m. and return at about 10:00 p.m. On 22.8.04, it was a Sunday and her husband had left for his work at 3:00 p.m. She has identified each of the accused by name in the court and stated that she had just finished cleaning her house and was sitting down when the accused had come to their house. Rampal tapped her on her cheek and they all came and asked her what she was doing. She asked them that her husband was not at home so why had they come. She has further deposed that abuses were hurled at her and she was hit on the forehead. Rampal delivered a blow on her head with a stick. She told them that she would make noise or start screaming, whereupon they all ran away. She has further deposed that thereafter when her husband came home at 10 O’ Clock at night she related the incident regarding the accused coming there.

Thereafter her husband went near Jiten’s house to ask Jiten and Rampal. She also went along with him and her husband had asked them as to why they were going to his house when he was not there. At this those people told him that these days you have become very highhanded and that they would go to his house, whereupon her husband beseeched them with folded hands. She has further deposed that Rampal suddenly dealt a blow with a sword on her husband’s head. Thereafter Jiten inflicted a knife blow on his cheek. Pushpin delivered a blow on his head with a hockey stick. Thereafter Ghanshyan, Kandaswami and Bhola had hit him on the back with sticks. She, therefore, started shouting for help, whereupon they told her that they would beat her also. In the meanwhile the public came running and the accused ran away. Thereafter she and her brother-in-law Radhe took her husband to Vadilal Hospital, where the doctor upon examining him declared him dead. Thereafter at about 11:30 p.m. she had given her complaint at the hospital. In her deposition she has described the weapons used by the accused and has identified the same. She has deposed that as the accused live close to her house, they are known to her. In her cross-examination, nothing is brought out which would create any doubt regarding her version about the incident. On the contrary it has been established that the house of accused Jiten is situated opposite her house and that the houses of Rampal and Pushpin are also situated near by. In her cross-examination

she has admitted that there was darkness on the road, but has clarified that there was light in the houses. She has also clarified that though the other houses in the locality were closed her house was open. Her version is fully corroborated by the F.I.R. at Exh.15, which she had lodged at the hospital itself at the earliest opportunity without any delay.

18. From the evidence of Sulochanaben, it is evident that she knew the accused much prior to the incident as they were residing close by and were carrying on the same business of puri-pakori like her husband. She has lodged the complaint within reasonable time and has named all the accused along with the specific weapons used by them. From her evidence and the FIR lodged by her the prosecution has been able to successfully establish that the accused have caused innumerable external and internal injuries to the deceased by means of lethal weapons like sword, knife, hockey stick and sticks, which resulted in his death.

19. The other eyewitness, P.W.3, Radhe Shribhagwan Sharma who was a close friend of the deceased has been examined at Exh.28. This witness has deposed that on that fateful night after he had returned home from his pakodi business, Bantu had told him about the incident and had gone to talk with those people as to why they had beaten his wife. At that time Rampal had a sword in his

hand, Jitendra had a knife in his hand, Ghanshyam had a hockey stick in his hand and Kandaswami and Bhola had sticks in their hands. He has further deposed that these people had started assaulting Bantu. Rampal had assaulted Bantu with a sword on his head and his back. Jitendra had inflicted a knife blow below his ear. Jiten, Rampal, Pushpin with a hockey stick and the others with sticks started raining blows on Bantu and upon his going to save him Pushpin hit him with a hockey stick and he was injured on his hand and shoulder. He, therefore, went to fetch a stick to save Bantu at that time these people were beating him mercilessly. He cried for help through the window and Sulochana was also shouting for help whereupon the accused left Bantu and ran away. Thereafter, he and Sulocahana took Bantu to the hospital in a rickshaw. He has also identified each of the accused as well as the weapons used by each of them. This witness has also been subjected to lengthy and searching cross-examination, however, nothing has been brought out which can create any doubt against his testimony. On the contrary from his cross-examination it has been established that he and deceased Bantu were living in separate rooms within a distance of five feet from each other. In his cross-examination he has denied that there were no streetlights on the road leading to their house. He has admitted that there is no street light in front of Jiten’s house but has clarified that there was light from the opposite house.

20. Radhe’s testimony fully supports the case of the prosecution and is consistent with the evidence of the other eyewitness Sulochanaben. His presence at the scene of offence is quite natural considering the proximity of his place of residence to that of the deceased and the accused and nature of his relationship with the deceased. His presence at the scene of offence is further established by the presence of bloodstains bearing the blood group of the deceased on the clothes worn by him at the time of the incident. His evidence also proves that a light bulb was on in the nearby house and there was sufficient light to witness the incident.

21. Upon evaluation of the evidence of the two eyewitnesses, it is clear that both have actually witnessed the incident. Due to proximity of their place of residence as well as the fact that the deceased and the accused were carrying on the same business, the accused were known to them. At the time of the incident there was sufficient light from the lighted bulb in the house near the place of incident, hence there is no question of any misidentification of the accused. It is also established that the incident had taken place near the house of accused Jitendra. The deceased had gone to reprimand the accused in connection with the earlier incident wherein the accused had teased the complainant. At that time there was some

exchange of words and without any provocation, the accused who were armed with lethal weapons had attacked the deceased and inflicted successive blows on his body, causing injuries to his vital organs which resulted into his death.

22. It becomes clear from the evidence of the eyewitnesses, that the accused were the authors of the crime in question. The evidence of both the witnesses has remained unimpeachable and the defence has not been able to discredit their testimonies. Merely because both the eyewitnesses are close to the deceased is no ground to discard their testimonies. On the contrary, it is well settled that close relatives would not be interested in implicating innocent persons in place of the real offender. Their main concern would be to see that the real culprits are brought to book. The Apex Court in the case of State of ***A.P. v. S. Rayappa and others***, (2006) 2 Supreme Court Cases (Cri) 353 has held that by now it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted

somehow or the other either because of animosity or some other reasons. It was further held that the relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witness should be examined cautiously.

23. In view of the aforesaid legal position, it cannot be said that either of the two eyewitnesses are interested witnesses as there is absolutely no evidence to indicate that either Sulochanaben or Radhe bore any animus against the accused. After carefully evaluating the evidence of the eyewitnesses, we are satisfied that the trial Court has rightly placed reliance on their evidence as their testimonies are reliable and trustworthy and their presence at the scene of offence is natural.

24. The prosecution case finds support in the testimony of PW.1, Dr. Rohit Chimanlal Zariwala, Exh.12, who has performed autopsy of the dead body of the deceased and produced the Post-mortem Report at Exh.13. In his deposition he has stated that upon conducting post mortem

examination, 45 external injuries were found as noted in column No.17 of the Post-mortem report. He has deposed that corresponding to external injuries No.30, 31 and 34 ecchymosis is found in the scalp tissue. A thin film like sub-dural haemorrhage could be seen on right frontoparito temporal and left frontotemporo occipital lobes of the cerebrum. Subarachnoid haemorrhage was present as a dense layer over both the hemispheres. The brain was congested and oedematous and the cerebro spinal fluid was blood stained. External injury No.8 had entered into the abdominal cavity through the skin, the sub-cutaneous tissue, anterior abdominal wall, peritoneum and cut intestine anteriorly. The size of the wound was 0.5 cms x 0.5 cms, both angles were acute and margins were sharply cut. The wound was directed backwards, downward and towards the right. The surrounding tissue of the track was haemorrhagic and the abdominal cavity contained approximately 500 cc of blood. Corresponding to injury No.27 there were cuts on the skin, subcutaneous tissue, ligamentum nuchae, trapezius muscle, fascia, splenius muscle, levator scapulae, sternockidomustoid, scalenus medialls, scelenus posterior, semispinalis capatis muscles, C-4 cervical vertebra and corresponding region of the spinal cord.

In his opinion the cause of death was due to shock as a result of injuries sustained. He has

further deposed that injuries caused on the head due to external injuries No.30, 31 and 34, the internal injuries on the stomach corresponding to external injury No.17 as well as the internal injuries caused on account of external injury No.27 on the neck of the deceased were sufficient in the ordinary course to cause death. In his opinion the injuries other than the above-mentioned injuries though independently were simple in nature, collectively can be said to be grievous in nature. He has also deposed that all the injuries were ante mortem and that the muddamal weapons can cause the injuries sustained by the deceased.

He has deposed that the deceased was wearing a black pant with vertical white lines and a white undergarment. Several spots of blood and earth were found on both the aforesaid clothes. He has further deposed that the clothes and other articles recovered during post-mortem examination had been sealed, labelled and handed over to the police officer. About 20cc of blood of the deceased preserved in a sealed and labelled glass bottle had also been handed over as per the request of the investigating officer. Though subjected to extensive cross-examination nothing has been brought out to shake his testimony.

The ghastly manner in which the deceased has

been done away with is apparent from the 45 injuries noted in column No.17 of the Post-mortem report. Most of the injuries are sustained on vital parts of the body and demonstrate the manner in which the deceased has been mercilessly butchered by the assailants. One shudders to think how people living in a civilized society could act with such brutality.

25. The prosecution case finds further corroboration from the various panchnamas drawn by the investigating officer in the presence of panchas. The scene of offence panchnama fully supports the prosecution case. As per the said panchnama there were bloodstains on the ground in front of the house of accused Jitendra. Blood marks were also found on the plaster on the open passage leading to his house. The panchnama also finds support in the opinion of the FSL Officer (exh.19) who had visited the scene of offence. Thus, the say of the eyewitnesses that the incident had taken place in front of the house of accused Jitendra is duly established by the prosecution.

26. The evidence of the eyewitnesses finds further corroboration in the discovery panchnamas drawn by the investigating officer under section 27 of the Evidence Act in the presence of panchas. The panchas have not fully supported the discovery panchnamas Exh.40 and 44 whereas panchas have not supported discovery panchnamas Exh.37, 49

and 52 and scene of offence panchnama Exh.30, though they have all admitted their signatures on the panchnama and panch slips. However, the prosecution has been able to prove the panchnamas through the testimony of PW.15, the investigating officer Shri C.S. Baranda who has been examined at Exh.64. Under the panchnama Exh.37 a blood stained knife has been recovered at the instance of accused Jitendra Biharilal Shrivas. Under panchnama Exh.40 a bloodstained sword has been recovered at the instance of accused Rampal Pannalal Shrivas. Under panchnama Exh.44 two bloodstained broken pieces of a stick and one bamboo stick were recovered at the instance of accused Ghanshyam Gopiram Shrivas. Under panchnama Exh.49 a hockey stick was recovered at the instance of accused Pushpendra @ Pushpin Virambhai Shrivas and under panchnama Exh.52 a bamboo stick was recovered at the instance of accused Kandaswami Atiappa Madrasi. It is by now well settled that if the panchas turn hostile, the panchnama can be proved through the evidence of the concerned police officer and if the same is found trustworthy and reliable, the same can be accepted. In the present case, the prosecution has successfully proved the above referred panchnamas through the evidence of the investigating officer, whose testimony inspires confidence and is trustworthy and reliable. Moreover, despite lengthy cross-examination, nothing has been brought out to discredit his testimony.

27. All the aforesaid muddamal weapons had been sent to the Forensic Science Laboratory for analysis. As per the FSL and serological report, except for one bamboo stick, human blood was found on all the muddamal weapons. The blood found on some of the weapons was of “A” group which is the blood group of the deceased. In case of some of the weapons the blood group could not be ascertained. As per the Physical Analysis Report of the FSL (Exh.26), the two broken pieces of stick with bloodstains were found to be parts of the same stick. Therefore, it is apparent that accused Ghanshyam has delivered such a forceful blow on the deceased that it has resulted in the stick breaking into two parts. The aforesaid evidence read with the ocular testimony of the witnesses leaves no room for doubt that the said weapons were used in the commission of the offence.

28. The prosecution case is further fortified by the evidence in the form of FSL reports and serological reports regarding the clothes of the deceased, the eyewitnesses and the accused. As noted above the inquest panchnama and the panchnama of the clothes of the deceased, clothes of the eyewitnesses and clothes of the accused, the FSL Report, Serological Report etc. have not been disputed. The FSL report shows that blood belonging to blood-group of deceased has been found on the clothes of the deceased,

clothes of both the eyewitnesses and clothes of the accused Rampal and Ghanshyam which clearly establishes their presence at the time of the incident.

29. Thus there is ample direct positive evidence showing involvement of all the six accused. The oral evidence itself is sufficient to hold them guilty. That is amply corroborated by documentary evidence as discussed hereinabove. Under the above circumstances, on totality of the established facts and circumstances of the case, we are fully satisfied that the accused had jointly assaulted the deceased with their weapons causing severe injuries resulting in his death. The eyewitnesses have attributed specific role to each of the accused along with the specific weapon used by each of them in the commission of the offence. From the testimony of the medical officer it is evident that the injuries on the body of the deceased have been caused by the muddamal weapons. The manner in which they came together with the weapons and attacked the deceased and caused multiple injuries with those weapons, is clearly indicative of the common intention with which the accused were acting and leaves no room for doubt that all the accused are equally guilty of the offence. The common intention of all the accused to do away with the deceased is firmly established by the prosecution.

30. In the view of the above discussion we are of the clear opinion that the trial Court was fully justified in convicting all the appellants for the offence punishable under section 302 read with section 34 of the Indian Penal Code as well as in convicting all the appellants (except Kandaswami) for the offences punishable under Sections 352, 354 and 323 of the Indian Penal Code, and find no merit in these appeals. The appeals are accordingly, summarily dismissed.

31. Record and proceedings to be sent back to the trial Court, forthwith.

32. Registry shall place a copy of this order in each appeal.

[R.P.DHOLAKIA, J.]

[HARSHA DEVANI, J.]

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